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ALEXANDER L. STEVAS,
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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1981

NO. 81-2318

STATE OF FLORIDA,

Petitioner,

-vs-

CONSTANTINO CASAL and
OMAR GARCIA,

Respondents.

ON WRIT OF CERTIORARI TO THE
SUPREME COURT OF FLORIDA

BRIEF OF PETITIONER

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QUESTION PRESENTED FOR REVIEW

WHEN THE SUPREME COURT OF FLORIDA FOUND THAT THE STOP OF RESPONDENTS' BOAT FOR INSPECTIONS PURPOSES WAS VALID AND THAT RESPONDENTS WERE VALIDLY ARRESTED PRIOR TO THE HOLD OF THE BOAT BEING SEARCHED, DID THAT COURT INCORRECTLY FIND THE SEARCH OF THE HOLD INVALID WHEN IT WAS PROPER AS BEING INCIDENT TO ARREST, AS FALLING UNDER THE "CARROLL EXCEPTION" TO THE WARRANT REQUIREMENT AND AS AN APPROPRIATE INSPECTION FOR SAFETY REASONS?

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OPINIONS BELOW

Respondents' convictions were reversed by Florida's Third District Court of Appeal in Casal v. State, 375 So.2d 1077 (Fla. 3rd DCA 1979). The State obtained certiorari review by the Supreme Court of Florida, which approved of the district court's conclusion, although employing different reasoning, in State v. Casal, 410 So.2d 152 (Fla. 1982). The opinion of the district court on remand is reported as Casal v. State, 411 So.2d 1040 (Fla. 3rd DCA 1982).

JURISDICTION

The opinion of the Supreme Court of Florida issued January 14, 1982. Rehearing was denied March 15, 1982, and mandate issued that date.

The petition for writ of certiorari was filed June 17, 1982, and was granted

October 4, 1982. Jurisdiction is invoked pursuant to 28 U.S.C. § 1257(3).

CONSTITUTIONAL PROVISION INVOLVED

Fourth Amendment, United States Constitution.

The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

STATEMENT OF THE CASE

The Supreme Court of Florida, in State v. Casal, 410 So.2d 152 (Fla. 1982), set forth relevant facts as follows:

> While patrolling the Atlantic side of the Florida Keys at night, Officers Walker and Soli of the Florida Marine Patrol saw a fishing vessel then being operated by the respondents. Although the Marine Patrol had received several complaints from local fishermen that their traps were being raided, the officers initially had no suspicion that the operators of the vessel were engaged in illegal activity. Nevertheless, they pulled alongside the vessel and asked the captain to cut his engines. They then asked to see the boat's registration certificate which is legally required to be on board. See § 371.051(5), Fla.Stat. (1977). The captain, Omar Garcia, produced a tax receipt and some other documents but could not locate the registration certificate. Because the boats were banging along each other, Officer Soli asked permission to board the vessel. The respondents assisted her on board.
>
> Upon boarding Officer Soli accompanied the respondents to the cabin to help look for the registration certificate. She testified that the respondents seemed agitated

> and apprehensive insofar as they were looking at each other a lot. She then asked to look in their icebox. After being told that would be fine she opened the icebox and saw some rotten food but no ice. This seemed strange to her since the captain had earlier said that they were on their way to Cay Sal to go fishing. She reported this finding to Officer Walker who had maneuvered the Marine Patrol vessel a few feet away to keep it from bumping into respondents' vessel. Officer Soli then asked to look in the forward hatch. Captain Garcia asked if she had a search warrant. Overhearing this exchange Officer Walker told Garcia that they did not need a search warrant since they were not conducting a search and that he was under arrest for not having a boat registration certificate on board. Garcia then said there was no need to go further and that the boat was loaded with grass. Officer Walker called respondents over to the side of the boat and after advising them of their Miranda rights asked them to confirm what was just said by opening the front hatch for Officer Soli's inspection. When they did so she discovered several bales of Marijuana. 410 So.2d at 153.

Pretrial, Respondents moved to suppress the marijuana on the basis that the search was illegal since the officers had neither

probable cause to stop the vessel nor, having stopped the vessel, probable cause to search it. The trial court denied the motion. Respondents proceeded to trial and were convicted of violating § 893.03(1)(c), Fla.Stat. (1977) and § 893.13(1)(a), Fla.Stat. (1977). On direct appeal, the Third District Court of Appeal of Florida reversed, finding the stop to be invalid. Casal v. State, 375 So.2d 1077 (Fla. 3rd DCA 1979). The State obtained certiorari review in the Supreme Court of Florida. That court disagreed with the district court's conclusion regarding the stop and held it to be valid. Despite the validity of the stop, the court reasoned the marijuana should have been suppressed because the search was unlawful. In a split decision, it approved the district court's reversal of the convictions. State v. Casal, 410 So.2d 152 (Fla. 1982).

Justice Alderman and Justice McDonald, concurring in part and dissenting in part, found the stop to be valid and concluded that the search was valid as a search incident to the arrest and valid under the "Carroll exception" to the warrant requirement.

SUMMARY

The Florida Supreme Court in State v. Casal, 410 So.2d 152 (Fla. 1982), improperly held the search of the hold of the San Rafael, subsequent to Respondents' arrest, unreasonable under the Fourth Amendment where said search was justified as a search incident to a lawfully custodial arrest, a valid warrantless search under the "Carroll" exception, and a valid warrantless administrative "search."

The Florida Supreme Court ignored this Court's decisions in Chimel v. California,

395 U.S. 752 (1969) and New York v. Belton, 453 U.S. 454 (1981), where, as here, respondents were validly under arrest and the search of the vessel's hold was incident to said arrest. The contemporaneous warrantless search of the immediate area was justified by the fact that two marine patrol officers, after arresting Respondents, needed to secure said vessel and check for possible hidden weapons or other armed confederates. Since Respondents' arrests were not at issue but merely the scope of the search, New York v. Belton, supra, controls.

The court specifically concluded that the search subsequent to Respondents' arrests was not consensual, and therefore, violated the Fourth Amendment. This Court's decisions in Carroll v. United States, 267 U.S. 132 (1925) and United States v. Ross, ___ U.S. ___, 72 L.Ed.2d

572 (1982), justify the warrantless search herein. The marine patrol officers, based on Garcia's statements that the hold was filled with marijuana, acquired the requisite probable cause to search the San Rafael following Respondents, arrests. Not only did Garcia's volunteered statements equate to a consent to search but also provided the necessary probable cause under Ross, supra, to search the hold of the vessel.

These circumstances also justified Officer Soli's looking into the San Rafael's hold based on her authority under Florida law to inspect the vessel for registration certification, safety equipment and fishing permits and limits. A legitimate visual inspection was authorized in light of the State's regulation of boating and fishing in the coastal waters of Florida. Donovan v.

Dewey, 452 U.S. 594 (1981); Colonade Catering Corp. v. United States, 397 U.S. 72 (1970); United States v. Biswell, 406 U.S. 311 (1972).

ARGUMENT

A. SEARCH INCIDENT TO ARREST

A search of the person arrested and of the immediately surrounding area contemporaneous to a lawful custodial arrest not only results in an exception to the warrant requirement of the Fourth Amendment, but also is a "reasonable" search pursuant to the Fourth Amendment. United States v. Robinson, 414 U.S. 218 (1973).

In Chimel v. California, 395 U.S. 752 (1969), this Court announced that searches incident to a lawful arrest have long been considered valid due to the ever present need "to remove any weapon that [an arrestee] might seek to use in order to

resist arrest or effect his escape" or to prevent the concealment or destruction of evidence. 395 U.S. at 763.

In an effort to resolve the difficulty courts have discovered in applying the "Chimel" principle, this Court in New York v. Belton, 453 U.S. 454 (1981), set forth a "workable rule" that:

> Accordingly, we hold that when a policeman has made a lawful custodial arrest of the occupant of an automobile, he may, as a contemporaneous incident of that arrest, search the passenger compartment of that automobile.

453 U.S. at 460. See also United States v. Martinez-Fuerte, 428 U.S. 543, 548 (1976) (upholding the search of a vehicle trunk after arrest of three occupants).

The search here is controlled by the principle announced in Belton, supra, in that the search was incident to Respon-

dents' arrest.[1] Respondents were placed under arrest for failure to have the proper boat registration aboard the San Rafael, a commercial-type fishing vessel.[2] Miranda

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[1]The validity of Respondents' arrests has not been questioned by Respondents in a cross-petition. The Florida Supreme Court held that the stopping of the San Rafael was not unreasonable under the Fourth Amendment, State v. Casal, 410 So.2d at 155. The question of whether the arrests were proper was not an issue before the Florida Supreme Court in State v. Casal, supra, nor specifically at issue before the Third District Court of Appeal in Casal v. State, 375 So.2d 1077 (Fla. 3rd DCA 1979). See Engle v. Isaac, ___ U.S. ___, 71 L.Ed.2d 783 (1982) and Abel v. United States, 362 U.S. 217, 230-232 (1960). Moreover, the historical facts as set forth by the Supreme Court of Florida in Casal negate any question as to the validity of the arrest. See Sumner v. Mata, 449 U.S. 539 (1981).

[2]Section 370.02(2), Fla.Stat. (1977), provides in part that the duties of the marine patrol are to regulate the operations of all fishermen and vessels of this state . . .

warnings were immediately read to Respondents and Officer Walker asked Respondents to "confirm what was just said (that the boat was loaded with marijuana) by opening the front hatch for Officer Soli's inspection." State v. Casai, 410

(cont. from previous page)
Section 370.021(5), Fla.Stat. (1977), provides that the marine patrol officers are law enforcement officers authorized with full power to investigate and arrest for any violation of the laws of Florida. Section 371.041, Fla.Stat. (1977), requires all motorboats to be registered within 10 days of purchase. Section 371.051(5), Fla.Stat. (1977), states in part that the "certificate of registration . . . shall be available for inspection on the boat for which issued whenever such boat is in operation." Section 37.162, Fla.Stat. (1977), provides in part that the purpose for registration is to "provide for a boat registration license fee and certificate so as to determine the ownership of boats which travel the waters of this state and to aid in the advancement of maritime safety." Lastly, pursuant to Section 371.65(5)(6), Fla.Stat. (1977), it is a misdemeanor to operate motorboat without a current registration.

So.2d 152, 153 (Fla. 1982).

In Belton, supra, this Court observed that the "validity of the custodial arrest of Belton has not been questioned . . ." 453 U.S. at 460 n.2. Similarly, sub judice, the issue revolves not on the validity of the arrest, but rather whether the search of the hold immediately following said arrest falls within the scope of Chimel. See Michigan v. DeFillippo, 443 U.S. 31 (1979).

As noted in the dissenting opinion by Justice Alderman relying on this Court's decision in Chimel:

> In the present case, there is no question that the search was conducted immediately upon arrest of the defendants, and the hold of the boat was easily accessible to the defendants. It is not inconceivable that the defendants may have had weapons hidden in the hold or that armed accomplices could have been hiding there, merely waiting an opportunity to surprise the officers and to thwart the arrest of defendants. Likewise, it is not

> inconceivable that defendants could have quickly reached the hold and attempted to destroy the evidence by throwing it overboard.

410 So.2d at 157.

This Court, in United States v. Chadwick, 433 U.S. 1 (1977) and United States v. Robinson, supra, held that an arresting officer will not be required to calculate the probability that weapons or destructible evidence may be involved. The occurrence of a lawful custodial arrest, singularly authorizes a warrantless search. Michigan v. DeFillippo, supra.

Equally here, as in Belton, the search of the hold of the boat fell within the panorama of the arrestee's immediate control. The San Rafael was not in port but rather off the coast of Monroe County, Florida. The two marine patrol officers had placed Respondents under arrest for

violating Chapter 371, Fla.Stat. (1977), and Respondent Garcia had informed the officers that the hold contained marijuana.[3] Unlike Chambers v. Maroney, 399 U.S. 42 (1970), no delay occurred, rather the officers functioned responsibly in searching the hold for either weapons or

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[3] As observed in Belton, 453 U.S. at 461 n.5,

> It seems to have been the theory of the Court of Appeals that the search and seizure in the present case could not have been incident to the respondent's arrest, because Trooper Nicot, . . . had gained "exclusive control" of "the [the jacket] them. [Citation omitted.] But under this fallacious theory no search or seizure incident to a lawful custodial arrest would ever be valid; . . .

other persons authorized specifically under Belton, supra. See Washington v. Chrisman, ___ U.S. ___, 70 L.Ed.2d 778 (1982). Indeed, the situation here presents a more compelling justification for the search incident to arrest since in Belton, supra, unlike here, the occupants were already taken from the car.

It is also significant to note that there is a distinct difference between the hold of a boat and a trunk of a car. Because of the nature of a vessel, the hold can be reached without leaving the vessel and without using a key to unlock the hold. "[S]ince the justification for the search is not that the arrestee has no privacy interest in the container, but that the lawful custodial arrest justifies the

infringement of any privacy interest the arrestee may have", 453 U.S. at 461, the search of the hold of the San Rafael was valid as incident to Respondents' arrest.[4]

B. "CARROLL EXCEPTION"

In Carroll v. United States, 267 U.S. 132 (1925), this Court established the automobile exception to the warrant requirement of the Fourth Amendment. The Court recognized that because of the movability of vessel and automobiles, exigent circumstances authorizes warrantless searches based on probable cause. In distinguishing warrantless searches of vehicles from searches of fixed structures,

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[4] See, however, United States v. Freeman, 660 F.2d 1030 (5th Cir. 1981), which held that the ice hold on a fishing vessel was public not private, and therefore, neither the captain nor the crew had an expectation of privacy.

the Carroll Court observed that it was not practicable to "secure a warrant because the vehicle [vessel or automobile] can be quickly moved out of the locality or jurisdiction in which the warrant must be sought." 267 U.S. at 153. See Chambers v. Maroney, supra.

The question addressed in United States v. Ross, ___ U.S. ___, 72 L.Ed.2d 572 (1982), concerned the scope of a warrantless automobile search based on probable cause. Citing to Carroll v. United States, supra, Justice Stevens observed in Ross:

> In Carroll itself, the whiskey that the prohibition agents seized was not in plain view. It was discovered only after an officer opened the rumble seat and tore open the upholstery of the lazyback. The Court did not find the scope of the search unreasonable. Having stopped Carroll and Kiro on a public road and subjected them to the indignity of a vehicle search--which the Court found to be a reasonable intrusion on their privacy because it was

> based on probable cause that their vehicle was transporting contraband--prohibition agents were entitled to tear open a portion of the roadster itself. The scope of the search was no greater than a magistrate could have authorized by issuing a warrant based on the probable cause that justified the search. Since such a warrant could have authorized the agents to open the rear portion of the roadster and to rip the upholstery in their search for concealed whiskey, the search was constitutionally permissible.

72 L.Ed.2d at 589. See Texas v. White, 423 U.S. 67 (1975) and Michigan v. Thomas, ___ U.S. ___, 102 S.Ct. 2079 (1982).

The question, here, is not whether the marine patrol officers would have been permitted to search the ice hold, United States v. Ross, but rather, whether there was probable cause to justify the search.

The Supreme Court of Florida in State v. Casal, supra, concluded that there was no probable cause:

> In this case the facts were insufficient to show that respondents

> were probably committing or about to commit a crime. That respondents could not produce a registration certificate and that, although they said they were going to the Bahamas, their icebox did not contain ice may have been suspicious circumstances but did not constitute probable cause. That respondents inquired about a search warrant is irrelevant in determining whether the officers had probable cause. Since the officers lacked probable cause, their search of the vessel was unreasonable and the evidence they obtained should have been suppressed.

410 So.2d at 156.

The conclusion drawn by the majority is inexplicable in light of the fact that Respondent Garcia told the officers, prior to the search of the hold, that the boat was loaded with marijuana. Justice Alderman observed in his dissent, joined by Justice McDonald:

> Captain Garcia, shortly after having been arrested for failure to have a registration certificate on board, without any prompting by anyone or without any questions being asked, told the officers that the boat was loaded with marijuana. At that time the officers clearly had probable cause to believe that the defendants' boat was carrying marijuana. The boat itself was fully mobile, and the question of whether it could have been secured is irrelevant. Chambers v. Maroney.

410 So.2d at 156-157.

The Florida Supreme Court apparently viewed Captain Garcia's statement that "there was no need to go further and that the boat was loaded with grass," 410 So.2d at 153, not as a volunteered statement or consent to search but rather "merely a submission to the apparent authority of the

officer." Villari v. State, 372 So.2d 522 (Fla. 1st DCA 1979).[5]

Captain Garcia's statement was made contemporaneous to his arrest. In United States v. Watson, 423 U.S. 411 (1976), this Court noted that the "totality of the circumstances" serves as the standard to be considered in determining whether consent to search was granted following Watson's arrest. Moreover, mere custody was held

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[5]The First District Court in Villari v. State, supra, in a distinguishable decision, held that consent was not freely and voluntarily given:

> Up to the point of Villari's question, "Don't you need a search warrant to look at my personal belonging?" his actions constituted consent to the search. There is no question that he consented, upon reasonable request, . . . When appellant asked the foregoing question, however, he indicated lack of consent to any further search in that he questioned the officer's authority to search further without a warrant. The officer's response was evasive. . . . Villari's statement of "Unhuh" or "Okay" was merely acquiescence or resignation to Pease's statement.

372 So.2d at 523-524.

not enough to justify coerced consent.[6]

The circumstances surrounding Garcia's statement that marijuana was on board cannot be characterized as acquiescence to authority. Garcia simply volunteered a "statement against penal interest" after Officer Walker clearly informed Garcia that "they (the officers) did not have a search warrant since they were not conducting a search . . ." 410 So.2d at 153. See Scher v. United States, 305 U.S. 251, 254-255 (1938); Rawlings v. Kentucky, 448 U.S.

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[6] In Watson, 423 U.S. at 424, this Court found that Watson's will had not been "overborne" or his "capacity for self-determination critically impaired," where there were no overt acts or threats of force; no promises or indication of more subtle forms of coercion to flaw his judgment.

> He had been arrested and was in custody, but his consent was given while on a public street, not in the confines of the police station. Moreover, the fact of custody alone has never been enough in itself to demonstrate a coerced confession or consent to search. . . .

98, 107-109 (1980); Coolidge v. New Hampshire, 403 U.S. 443, 488-489 (1971); United States v. DeWeese, 632 F.2d 1267 (5th Cir. 1980).[7]

In Rawlings v. Kentucky, supra, this Court observed that in assessing whether a statement was the product of free will, a case by case review need be undertaken. Here, either, Garcia "consented" to the search or his volunteered statement provided probable cause to support the subsequent search.

Assuming a Fifth Amendment issue arose based on Garcia's statement, the historical facts[8] reveal that contemporaneous to

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[7]The circumstances of Garcia's statement cannot be viewed in the same context as those found in Bumper v. North Carolina, 391 U.S. 545 (1968). See Schneckloth v. Bustamonte, 412 U.S. 218 (1973).

[8]See Edwards v. Arizona, 451 U.S. 477 (1981).

Garcia's arrest and statement, Miranda warnings were given and "without any prompting by anyone or without any questions being asked, [Garcia] told the officers that the boat was loaded with marijuana." 410 So.2d at 156-157.

Miranda v. Arizona, 384 U.S. 436 (1966), provides that an element of interrogation is preliminarily required in order to invoke Miranda protections.[9] The voluntariness of Garcia's statement is

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[9] See, however, United States v. Baker, 641 F.2d 1311 (9th Cir. 1981) and United States v. Warren, 578 F.2d 1058, 1070 (5th Cir. 1978), cert.denied, 446 U.S. 956 (1980), wherein the courts have held the Coast Guard boardings do not create a custodial situation requiring Miranda warnings before interrogation.

beyond peradventure.[10] As noted in Miranda, 384 U.S. at 478:

> Any statement given freely and voluntarily without any compelling influences is, of course, admissible in evidence. . . There is no requirement that police stop a person who enters a police station and states that he wishes to confess to a crime, or a person who calls the police to offer a confession on any other statement he desires to make. Volunteered statements of any kind are not barred by the Fifth Amendment . . .

Moreover, in Rhode Island v. Innis, 446 U.S. 291 (1980), this Court defined

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[10]The only rationale for not considering the admission as probable cause might be the fact that Officer Walker had just told Respondents that they did not need a search warrant. The officer stated "that they did not need a search warrant since they were not conducting a search." (A 17-18). Respondents could not have been under the impression that the boat would be searched anyway, rather, they were plainly told exactly the opposite, that the officers were not going to search. Under these circumstances, Respondent's statement was a volunteered spontaneous admission against penal interest.

"interrogation" for Fifth Amendment purposes as being not only express questioning, but also "any words or actions on the part of the police" that the police "should know are reasonably likely to elicit an incriminating response" from a suspect. This Court further observed that:

> A practice that the police should know is reasonably likely to evoke an incriminating response from a suspect thus amounts to interrogation. But, since the police surely cannot be held accountable for the unforeseeable results of their words or actions, the definition of interrogation can extend only to words or actions on the part of police officers that they <u>should have known</u> were reasonably likely to elicit an incriminating response.

446 U.S. at 301-302 (emphasis original).

Viewing the case in this light, neither Officer Walker nor Officer Soli placed Garcia in a circumstance that would characterize their activity as actions they

should have known would elicit said statement.[11] See United States v. Mendenhall, 446 U.S. 544 (1980) and United States v. DeWeese, supra.

Once on board, Respondent Garcia's "statement against penal interest" provided the requisite probable cause to search as much as the odor of marijuana or marijuana in plain view would have. United States v. Clark, 664 F.2d 1174 (11th Cir. 1981).

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[11] The record supports this contention in that the voluntariness of said admissions was never really challenged. Rather, Respondents maintained on direct appeal that the initial stop was illegal, and therefore, the admissions were fruits of the illegal stop. In State v. Casal, supra, the Supreme Court found the stop to be valid. The subsequent search of the hold was held illegal because no consent was obtained. 410 So.2d at 155-156.

Exigency was created by the inherent mobility of the vessel and the possibility it might escape the two marine patrol officers detaining it, the conditions present the early morning of September 18, 1977, and the possibility that the two men were not alone on the vessel or that they might have secret arms aboard, causing danger to the officers if the vessel was not immediately secured. The search of the San Rafael was justified under the Carroll exception to the warrant requirement of the Fourth Amendment. See Brinegar v. United States, 338 U.S. 160 (1938) and United States v. Kleinschmidt, 596 F.2d 133 (5th Cir. 1979).

C. INSPECTION SEARCH

In Donovan v. Dewey, 452 U.S. 594, 598 (1981), this Court concluded that although the proprietor of commercial property is protected from unreasonable intrusions by governmental authorities, "legislative schemes authorizing warrantless administrative searches of commercial property do not necessarily violate the Fourth Amendment."

This Court expressly recognized exceptions to the warrant requirement for federal inspections in certain areas as federally licensed liquor dealers, Colonade Catering Corp. v. United States, 397 U.S. 72 (1970); federally licensed gun dealers, United States v. Biswell, 406 U.S. 311 (1972); and federally regulated stone

quarry operations, Donovan v. Dewey, supra.[12]

Florida's legislature has similarly enacted legislation authorizing administrative searches or authorized inspections for specific industries.[13] In enacting legislation for the regulation of boating and fishing, § 370.02, Fla.Stat. (1977), provides that the Florida Marine Patrol as the law enforcement arm of the Department

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[12] See Rush v. Obledo, 517 F.Supp. 905, 910 n.7 (N.D. Cal. 1981), for a detailed list of post-Marshall v. Barlow's, Inc., 436 U.S. 307 (1978) cases which have upheld warrantless administrative searches. United States v. Raub, 637 F.2d 1205 (9th Cir. 1980).

[13] Bludworth v. Arcuri, 416 So.2d 882 (Fla. 4th DCA 1982) (inspections for records of junk dealers); Reynolds v. State, 383 So.2d 228 (Fla. 1980); Federman v. State Dept. of Business Regulation, Div. of Para-Mutual Wagering, 414 So.2d 28 (Fla. 3rd DCA 1982) (inspection of racetrack vendors); Tingley v. Brown, 380 So.2d 1289 (Fla. 1980) (inspection for undersize crawfish); Gluesenkemp v. State, 391 So.2d 192 (Fla. 1980) (agricultural inspections);

of Natural Resources, is authority to regulate "all fishermen and vessels . . . engaged" in the taking of fishery resources "to issue licenses" and all other duties and operations directed to "the broad objective of managing such fisheries in the interest of all people . . ." Concomitantly, all motorboats shall be registered (§ 371.041, Fla.Stat. (1977)); such registration shall be on board and available (§ 371.051(5), Fla.Stat. (1977)); and it is a misdemeanor not to have a current registration (§ 371.65(5), Fla.Stat. (1977)).

Section 371.58, Fla.Stat. (1977), specifically provides for safety inspections of all boats and reads in material part:

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and Hill v. State, 238 So.2d 608 (Fla. 1970) (regulates taking of saltwater fish).

> When the owner of operator is aboard an officer may board a vessel with consent or when he has probable cause or knowledge to believe that a violation of a provision of this part has occurred or is occurring.

Officers Walker and Soli, in the early morning hours on September 18, 1977, stopped the San Rafael in the Atlantic waters off Monroe County, Florida (A 12-13, 53-54, 62-63). The officers' stated purpose for stopping the vessel was to conduct a check of the vessel's registration papers and safety equipment (A 14, 55). No registration papers were produced (A 27, 34, 56).

Officer Soli received permission to board the vessel in order to speak with Respondents and assist in locating the registration papers and to make a safety

inspection of the boat (A 16, 23, 56-57, 59-60, 70). Respondents were subsequently arrested for not carrying registration papers aboard the vessel (A 18, 61). Respondent Garcia then informed the officers, "Well, there is no need to go any further, the boat is loaded with grass." (A 18, 43, 60). Miranda warnings were immediately provided and Garcia again stated the vessel was carrying marijuana (A 18, 61). Officer Soli, with the assistance of Respondents, inspected the forward hold where large bales of marijuana were revealed (A 20-21, 84).

The validity of the initial stop of the San Rafael is not in question.[14] Moreover,

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[14]The Florida Supreme Court in State v. Casal, supra, citing to United States v. Martinez-Fuerte, 428 U.S. 543 (1976), found there was no less intrusive alternatives available to the marine patrol in carrying out their duties, in that:

Officer Soli obtained permission to board the San Rafael when Respondents could not produce their registration papers.[15] Officer Soli stated her purpose was to do her duty:

> I felt that I was doing as a Marine Patrol Officer in checking boats that were on the water and the boat couldn't produce the registration and I went aboard the boat for routine safety check. . . . To me, I was just doing my job, I had no suspicions when I went aboard the boat, the gentlemen could not produce the paper, I went on board the boat.

(A 66-67).

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> Boat travel is not limited by fixed roadways. Unlike an automobile, a boat at sea can travel in any direction. Even in harbors where there are channels which boats must follow, it would be impossible to establish a checkpoint on the water since boats cannot come to a complete stop and line up behind each other on the water as cars can on roads.

410 So.2d at 155.

[15] See § 371.58, Fla.Stat. (1977).

Once consensually on board, Officer Soli had the authority to inspect the vessel for safety equipment and check for fishing permits. The inspection encompassed those areas on the San Rafael which were within the scope of the marine patrol's responsibilities to inspect, to-wit: the icebox and the forward hold.[16]

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[16]The facts reveal that Garcia consented to the search of the icebox (A 58), where Officer Soli found no ice and rotten food. 410 So.2d at 153. Her inspection of the forward hold occurred after Respondents were placed under arrest. See United States v. Freeman, 660 F.2d at 1034, wherein the court observed that an ice hold or fish hold is a public not private area of a vessel and within the area to be inspected. United States v. DeWeese, 632 F.2d at 270-271.

See also United States v. Tsuda Maru, 470 F.Supp. 1223, 1229-1230 (D. Alaska 1979).

In United States v. Martinez-Fuerte, 428 U.S. 543 (1976), this Court made it abundantly clear that neither probable cause nor reasonable suspicion was necessary in order to conduct a stop and legitimate visual inspection of a vehicle because such would be totally impractical to protect the government's interests.

Obviously if the state and federal governments can require a particular type of automobile to stop or check for registration on a boat, they can and may exact laws to enforce that governmental activity.

The inspection of the forward hold of the San Rafael falls within Florida's version of the Biswell-Colonade exception.[17] See United States v. Raub,

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[17] Section 371.62, Fla.Stat. (1977), specifically provides that it is the legislative intent to uniformly license boats throughout the state and:

637 F.2d 1205 (9th Cir. 1980).

In United States v. Piner, 608 F.2d 358 (9th Cir. 1979), the Ninth Circuit assumed, arguendo, that the governmental interest in securing compliance with safety regulations did outweigh the intrusion or privacy encountered in the ordinary boarding. Although the court reversed said case based on those particular facts, the court concluded:

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to provide for a boat registration license fee and certificate so as to determine the ownership of boats which travel the waters of this state and to aid in the advancement of maritime safety.

> If the purpose of the random stop is to ascertain and discourage non-compliance with safety regulations, we see no reason why this purpose cannot sufficiently be accomplished . . .

608 F.2d at 361.

In United States v. Hilton, 619 F.2d 127, 133 (1st Cir. 1980), that court explained the reasons why Delaware v. Prouse, 440 U.S. 648 (1979) did not apply to vessels. The court's reasoning aptly expounds Florida's concerns and needs in conducting inspections:

> We believe the limited intrusion represented by a document and safety inspection on the high seas, even in the absence of a warrant or suspicion of wrongdoing, is reasonable under the fourth amendment. While not devoid of protection under the fourth amendment, the ordinary vessel, like an automobile, carries with it a lesser expectation of privacy than a home or office. [Citations omitted.] And even more than cars, vessels are inherently mobile. The oceans are the highways of the world. Vessels off our coasts may be from anywhere on any mission. They may easily lose themselves on the trackless waters. The government's interests in being able to identify

> craft off the coasts are of major importance; to secure those interests the government must have a limited right to detain and inspect. The government's interests in being able to conduct discertionary safety inspections of its flag vessels have a similar degree of importance. . . .

619 F.2d at 131.

The importance of the fishing and boating industries in Florida has spurred the Florida legislature to provide the Florida Marine Patrol with authority to stop and board a vessel (with consent or probable cause) and inspect for registration papers, safety equipment, and fishing permits and limits. The state's interest is not merely limited to insuring safety on the high seas but also to maintaining a regulatory scheme essential to a state such as Florida with a vast coastline, used for pleasure and commercial boating and fishing. Inspections following lawful boardings are crucial because most

safety devices in question and registration documents are not visible to a passing vessel. Therefore, in order to provide an effective deterrent to errant boaters and limit violations of safety requirements, unannounced inspections of boats in use are essential.

Here, Officer Soli lawfully boarded the San Rafael. Her inspection for safety equipment and documents reasonably led her to the forward hold where ice and fish would normally be kept. When the lid was raised, she smelled the aroma of marijuana and saw large bales of marijuana (A 84). At that instant she had the requisite probable cause to search the entire boat

for contraband. United States v. Clark, 664 F.2d 1174 (11th Cir. 1981).[18]

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[18]Alternatively, as noted by the Florida Supreme Court, the "suspicious circumstances", 410 So.2d at 156, were adequate to provide the requisite inference of probable cause to make an inspection for safety violations and fishing permits. Camara v. Municipal Court, 387 U.S. 523 (1967) and Marshall v. Barlow's Inc., 436 U.S. at 320. See Wigfall v. State, 323 So.2d 587 (Fla. 3 DCA 1975).

CONCLUSION

The actions of Officer Walker and Officer Soli fell within the prescribed exceptions to the Fourth Amendment warrant requirement in that the search of the San Rafael's hold was incident to a lawful custodial arrest; fell within the "Carroll" exception, and at the very least, was a valid administrative inspection authorized by state statute.

The Florida Supreme Court's decision in State v. Casal, supra, is irreconcilable in light of the facts and decisional law applicable. Without regard for the marine patrol's efforts in scrupulously adhering to the mandates of this Court, the Florida Supreme Court disregarded the volunteered statement against penal interest of Respondent Garcia and concluded that the search of the hold was not consensual because the officers lacked probable

cause. This erroneous and narrow application of the Fourth Amendment warrant requirement exception must not be countenanced.

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